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**HOUSE BILL 588**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Joe M Stell**

**AN ACT**

**RELATING TO INSURANCE; PROHIBITING UNFAIR SETTLEMENT PRACTICES;  
PROHIBITING PERSONS FROM REQUIRING THE USE OF DESIGNATED PARTS,  
REPAIR FACILITIES OR MANUFACTURERS AS A PREREQUISITE TO  
SETTLING A CLAIM**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. A new section of Chapter 59A, Article 16 NMSA  
1978 is enacted to read:**

**"NEW MATERIAL UNFAIR SETTLEMENT PRACTICES-- REPLACEMENT  
AND REPAIR. --**

**A. An insurer or its agents or contractors shall  
not:**

**(1) require an insured or claimant to use  
designated replacement or repair facilities or services, or the  
products of designated manufacturers, as a prerequisite to**

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1 settling or paying any claim arising under a motor vehicle  
2 insurance policy;

3 (2) engage in any act of coercion or  
4 intimidation causing or intended to cause an insured or  
5 claimant to use designated replacement or repair facilities or  
6 services, or the products of designated manufacturers, in  
7 connection with settling or paying any claim arising  
8 under a motor vehicle insurance policy;

9 (3) fail to disclose to the insured or  
10 claimant, prior to being referred to a third party  
11 representative in connection with a glass claim arising under a  
12 motor vehicle insurance policy, that the third party  
13 representative is not the insurer and is acting on behalf of  
14 the insurer;

15 (4) fail to disclose to the insured or  
16 claimant, at such time as the insurer or its third party  
17 representative recommends the use of a designated motor vehicle  
18 replacement or repair facility or service, or products of a  
19 designated manufacturer, in connection with settling or  
20 paying any claim arising under an insurance policy, that the  
21 insured or claimant is under no obligation to use the  
22 replacement or repair facility or service or products of the  
23 manufacturer recommended by the insurer or by a representative  
24 of the insurer; or

25 (5) fail to disclose to the insured or

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1 claimant, at such time as it or its third party representative  
2 recommends the use of a designated motor vehicle replacement or  
3 repair facility in connection with settling or paying any claim  
4 arising under an insurance policy, that the insurer or its  
5 third party representative has a financial interest in such  
6 replacement or repair facility, if the insurer or its third  
7 party representative has such an interest.

8 B. This section shall not be construed to require  
9 an insurer to pay an amount for motor vehicle repair services  
10 or repair products necessary to properly and fairly repair the  
11 vehicle to its pre-loss condition that is greater than the  
12 prevailing competitive charges for equivalent services or  
13 products charged by similar contractors or repair shops within  
14 a reasonable geographic or trade area of the address of the  
15 repair facility. Offering an explanation of the extent of an  
16 insurer's obligation under this section to its policyholder or  
17 third party claimant shall not constitute a violation of this  
18 section.

19 C. The superintendent shall investigate, with the  
20 written authorization of the insured or the claimant, any  
21 written complaints received pursuant to this section,  
22 regardless of whether the written complaints are submitted by  
23 an individual or a repair facility. For the purposes of this  
24 section, any insurance company using a third party  
25 representative shall be held accountable for any violation of

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this section by its third party representative. "

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